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IN THE SUPREME COURT OF THE UNITED STATES

Nos.....

OCTOBER TERM 1947

No.....

KENNECOTT COPPER CORPORATION, a corporation,
Petitioner,

vs.

SALT LAKE COUNTY, a political subdivision of the State of Utah,
Respondent.

No.....

SILVER KING COALITION MINES COMPANY, a corporation,
Petitioner,

vs.

SUMMIT COUNTY, a body corporate and politic of the State of Utah; and AGNES FARNSWORTH, as Treasurer of SUMMIT COUNTY, UTAH,
Respondents.

No.....

PARK UTAH CONSOLIDATED MINES CO., a corporation,
Petitioner,

vs.

SUMMIT COUNTY, a body politic and corporate of the State of Utah; and AGNES FARNSWORTH, Treasurer of SUMMIT COUNTY, UTAH,
Respondents.

No.....

PARK UTAH CONSOLIDATED MINES CO., a corporation,
Petitioner,

vs.

WASATCH COUNTY, a body corporate and politic of the State of Utah; and MARY L. GILES, Treasurer of WASATCH COUNTY, UTAH,
Respondents.

No.....

NEW PARK MINING COMPANY, a corporation,
Petitioner,

vs.

WASATCH COUNTY, a body corporate and politic of the State of Utah; and MARY L. GILES, as Treasurer of WASATCH COUNTY, UTAH,
Respondents.

PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that writs of certiorari be issued to review the respective judgments of the United States Circuit Court of Appeals for the Tenth Circuit entered in these cases April 14, 1947. (R. 303-5)

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Tenth Circuit will be found at page 295 of the record; it is reported at 163 F. 2d 484. The opinion of the United States District Court for the District of Utah, Central Division, was not reported but will be found in the record at page 174. This opinion is brief, for it refers to the Court's opinion in companion subsidy cases reported in 60 F. Supp. 181.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered April 14, 1947. (R. 303-5). Petitions for rehearing were denied October 6, 1947. (R. 359). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. (28 U.S.C. A. Sec. 347 (a)).

QUESTIONS PRESENTED

The questions presented are:

1. Whether the states (here the State of Utah) have

the power, in the absence of Federal consent, to levy a property tax based upon subsidies paid by the Federal government to the mine operators to stimulate the production of metals essential to the successful prosecution of the war. By these subsidies the government sought to defray, in whole or in part, the otherwise prohibitive costs to be incurred in exploring for, developing and increasing essential production, regardless of cost and waste.

2. May the taxing authorities of the State of Utah, for the purpose of an ad valorem tax, evaluate mines by a multiple of the amount of subsidies paid by the National government for the National purpose just stated? Must not such action by the State contravene the due process and equal protection clauses of the Fourteenth Amendment and as well Sections 8 and 10 of Article I of the Constitution of the United States.

3. Whether respondent Salt Lake County (with respect to Kennecott alone) has violated the requirements of the State and Federal Constitutions, by levying an arbitary and discriminatory tax, contrary to Utah statutes prescribing the method of and measure of value for such levies.

STATUTES INVOLVED

Sections 901 and 902 of the Federal Emergency Price Control Act of January 30, 1942 (50 U.S.C.A. App. Secs. 901 and 902; c. 26, Title I, Secs. 1 and 2, 56 Stat. 23 and 24), which authorized the payment by the Federal Government of "subsidy payments" to domestic producers, such as petitioners,

whenever it determined that the maximum necessary production of any essential commodity was not being obtained.[1]

Sections 8 and 10 of Article I of the Constitution of the United States, which delegate to Congress the power to wage war and deny that power to the states.

Article XIII, Sections 2 and 3 of the Utah Constitution, requiring that all tangible property be taxed in proportion to its value and that the legislature provide a uniform and

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[1] Sec. 901. Purposes; time limits; applicability.

(a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to *assure that defense appropriations are not dissipated by excessive prices;* * * * *to assist in securing adequate production of commodities and facilities;* * * * *and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes.*"

Sec. 902. Prices, rents, and market and renting practices.

(e) Whenever the Administrator determines that maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, * * * make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof. Provided, that in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended (Title 15, Secs. 616b, 609j), such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provisions of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d (Title 15, Secs. 606b, 609j).

equal rate of assessment and taxation for that purpose.[2]

Amendment XIV to the Constitution of the United States, forbidding deprivation of property without due process of law and the denial of the equal protection of the laws.

Sections 7 and 24 of Article I of the Utah Constitution, forbidding deprivation of property without due process of law and requiring that all laws of a general nature have uniform operation.[3]

Section 80-3-1 (5), Utah Code Annotated 1943, defining "Value."[4]

Sections 80-5-56 and 57, Utah Code Annotated 1943, which, in prescribing ad valorem taxes for metalliferous mines or mining claims under the Utah Constitution, establish as the base for determining the value of the property to be taxed, $5.00 per acre plus two times the net proceeds realized from

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[2] Article XIII, Sec. 2, Utah Constitution. "All tangible property in the State * * * shall be taxed in proportion to its value * * *." (Repeated by Sec. 80-1-1, Utah Code Annotated 1943).

Article XIII, Sec. 3, Utah Constitution. "The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all tangible property in the State, according to its value in money, and shall prescribe by law such regulations as shall secure a just valuation for taxation of such property, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its tangible property. * * *"

[3] Article I, Sec. 7, Utah Constitution. "No person shall be deprived of life, liberty or property, without due process of law."

Article I, Sec. 24, Utah Constitution. "All laws of general nature shall have uniform operation."

[4] 80-3-1 (5). "'Value' and 'full cash value' mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor."

marketing the ores.[5]

Article XIV, Section 11, Constitution of Utah, requiring that mines be assessed by the State Tax Commission.[6]

Section 80-5-3, Utah Code Annotated 1943, requiring that the county assessors of the several counties assess all taxable property not required to be assessed by the State Tax Commission.[7]

STATEMENT

Since 1942 and including 1947 the Federal government, in order to obtain essential production of copper, lead and zinc, paid subsidies to domestic producers, including petitioners, as empowered by the Federal Emergency Price Con-

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[5] 80-5-56. *Assessment of Mines.* ..All metalliferous mines and mining claims, both placer and rock in place, shall be assessed at $5 per acre and in addition thereto at a value equal to two times the net annual proceeds thereof for the calendar year next preceding.

80-5-57. "*Net Annual Proceeds Defined.* The words 'net annual proceeds,' of a metalliferous mine or mining claim are defined to be the gross proceeds realized during the preceding calendar year from the sale or conversion into money or its equivalent of all ores from such mine or mining claim extracted by the owner or lessee, contractor or other person working upon or operating the property, *including all dumps and tailings,* during or previous to the year for which the assessment is made, less the following, and no other deductions."

[6] Article XIV, Sec. 11, Constitution of Utah. "* * * The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines * * *."

[7] 80-5-3. "* * * all mines and mining claims * * * including * * * all machinery used in mining and all property or surface improvements *upon or appurtenant to mines or mining claims* * * * must be assessed *by the state tax commission* as hereinafter provided. * * * All taxable property not required by the constitution or by law to be assessed by the state tax commission must be assessed *by the county assessor* of the several counties in which the same is situated * * *."

trol Act (50 U.S.C.A. App. Sec. 902).[3] During the first year of the subsidy payments Utah's State Tax Commission decided that these payments should be *excluded* in computing "Proceeds realized *** from the sale or conversion into money or its equivalent of all ores," under the Utah statute determining the basis for the ad valorem property tax of mines (Sec. 80-5-57, Utah Code Annotated 1943). The following year the Commission reversed this position (R. 80), and for that year petitioners paid the tax under protest (R. 90), and brought these five cases in the District Court of the United States for the District of Utah to recover the respective sums paid. (R. 1, 177, 207, 237, 267). The cases were consolidated for trial, and judgments were entered in favor of petitioners and against the various respondents as prayed. (R. 162, 201, 232, 260, 289).

Petitioners charged that these exactions were improper under the laws of Utah because the subsidies had been paid by the Federal government to defray all or part of the costs of production, exploration for and development of submarginal ore bodies and bore no relation whatever to the value of the mines, and also because the subsidies paid were not proceeds realized "from the sale or conversion into money or its equivalent of all ores," as required by the Utah statute.

Petitioners charged that the State of Utah, if it intended so to divert to the domestic uses of the State, these subsidies paid by the Federal government for the purpose of waging a

[3] While these payments were particularly necessary during the war when price controls limited the market price of these commodities, necessity for continued domestic production has compelled the National government, under the same statutory authority, to continue its subsidies beyond the termination of both the war in 1945 and price control in 1946.

war, had acted in excess of its power; that the states have no power, by taxation or otherwise, to retard, impede, burden or in any manner control, interfere with, or trespass upon the sovereignty of the United States; that these tax levies were a direct burden upon the *means* employed by the Federal government to wage war and constituted an unlawful diversion of such means, without the consent of the United States, from the stated National purpose to the general revenues and domestic purposes of the State. (R. 12 to 13). And petitioners insisted that the State's attempt to evaluate their properties by this yardstick, which bore not the slightest relation to value, was wholly arbitrary, was a denial, as to them, of the equal protection of the laws and a deprivation of their property without due process of law.

In addition, Kennecott complained that the tax levy upon its property had included an amount collected by respondent Salt Lake County on Kennecott's millsites, golf course and tailings pond which was arbitrary, discriminatory, and contrary to Utah statutes and in violation of the State and National constitutions. (R. 13 to 19).

The District Court held with petitioners on all points. (R. 175). Respondents appealed, and the Circuit Court of Appeals reversed and remanded with directions to enter judgments for defendants. (R. 303-5). Rehearing was denied October 6, 1947. (R. 359).

REASONS FOR GRANTING THE WRITS

1. At the present time, the law in the mining states with relation to the State's power to tax the National subsi-

dies under the circumstances here related, is in conflict and confusion, and such will continue until authoritative decision settles the question. Not only are the years since 1942 and including 1947 involved, but it would appear that the necessity for continued governmental support to encourage production of metals may require further legislation in place of the metal subsidy bill for 1948-9, vetoed by President Truman last August (H. R. 1602). From information received by counsel it would appear that more than seventy-five cases are pending in Utah, Nevada, New Mexico and other mining states. The amount is substantial.

The Utah Supreme Court, on the basis of the facts of the particular cases before the Court and by a divided tribunal, has held that the State has the power and intended to tax Federal subsidies. United States Smelting Refining and Mining Co. v. Phares Haynes, etc., 176 P. 2d 622, and Combined Metals Reduction Co. v. Tooele County, 176 P. 2d 630, decided January 6, 1947. Petitions for rehearing were denied September 16, 1947.

Montana has held to the contrary. Klies v. Linnane, 156 P. 2d 183.

The decisions of the Utah Supreme Court and the Circuit Court of Appeals have brought to the attention of the taxing authorities of other states, where the question has been dormant, the potential tax liability.

2. The question is or should be of importance to the Federal government for, if such power is to be conferred upon the states, the cost to the United States will increase

directly with the tax liability, resulting in payment of subsidies, not to the producer nor in aid of National objectives but to the taxing states for their domestic uses. As set out in the record (p. 68), President Charles B. Henderson, of the Federal government's Metals Reserve Company, which administered payment of the subsidies, has stated:

> "Premium payments made by Metals Reserve Company are not payments made by that Company or received by the mining companies for the sale or conversion into money or its equivalent of any ores * * * to the extent that any portion of such premiums are taken by a state on account of a property tax, the purpose of Metals Reserve Company in paying the same would be defeated. * * * "

There is no Federal consent to the inclusion of the subsidies in any such tax base; the administrator's statement as indicated above, is directly contrary to the ruling of the Circuit Court of Appeals.

The rationale of petitioners wherein the subsidies are involved, was well expressed in the decision of Judge Tillman D. Johnson, who construed the Federal statute October 30, 1944 in the Occupation Tax Cases, 60 F. Supp, 181. He there held:

> "The State of Utah, neither by its legislature nor by its Tax Commission, can say what the United States Government shall do with its own money. That is a matter that must be determined by Congress, and its determination of that question is final and conclusive upon all the courts of the nation, State and National.
>
> " * * * the Government, for its own reasons, and without consulting the Legislature of the State of

Utah or its Tax Commission, made these extra and additional payments, and the Congress called it a subsidy.

"It is recited and reiterated by some of the Government representatives who have written about this matter, that these payments were made to meet the additional cost and expense that would be incurred by producers in making this extra effort to add to its product. Well, I am inclined to the view that these gentlemen were entirely right in that construction of the statute as to the purpose which Congress had in authorizing these subsidy payments.

• • •

" * I am very clearly of the opinion that neither the state statute nor the Federal statutes give the Tax Commission any authority whatever to make these levies and collections."

When there came before him the cases at bar involving the ad valorem property tax on mines, he stated:

"I am of the opinion in these cases that on the issue of subsidy paid by the Government, the Tax Commission unlawfully and wrongfully included it in their tax assessment. That is the view I had of the situation in the cases tried heretofore, (the occupation tax cases supra) and I think that all of these cases are on all fours with those cases that have heretofore been tried." (R. 174)

The Circuit Court of Appeals, adverting in its opinion to the difficulty in distinguishing between taxation of governmental interests and taxation of private interests sanctioned by such cases as James v. Dravo Contracting Co., 302 U. S. 134, 82 L. ed. 155, 58 S. Ct. 208, 114 A.L.R. 318; Alabama v. King & Boozer, 314 U. S. 1, 86 L. ed. 3, 62 S. Ct. 43, 140

A.L.R. 615; and Smith v. Davis, 323 U. S. 111, 89 L. ed. 107, 65 S. Ct. 157, decided the case at bar by saying:

> "The premium or subsidy payments were taken into consideration only as an element in the yardstick for measuring the value of the properties for purposes of ad valorem taxation. The inclusion of the premium or subsidy payments in the fixing of the tax base did not amount to a tax against the United States, its instrumentality, its activities, or its property; and it did not contravene any constitutional implication forbidding a tax under state law against the United States or its interests." (R. 299)

But to petitioners the cases are governed squarely by McCulloch v. Maryland, 17 U. S. 159, 4 Wheat. (U.S.) 316, 4 L. ed. 579, because the direct effect is the State's seizure of a portion of a fund paid by the National government for this paramount National purpose as stated in the Government's several contracts with mining operators. The State's seizure was to that extent, a diversion of those funds from the intended payment of operating costs incurred in exploration and in the development and production of ores, the stimulation of such production by these subsidies being the sole purpose of their payment.

This, it is respectfully submitted, is not the incidental and nondiscriminatory gross receipts tax of the Dravo case, or the sales tax of the Boozer case; it is just as much a tax upon the operations of the National government as was that attempted and declared void when Maryland levied a tax on the Bank of the United States in McCulloch v. Maryland. The Circuit Court of Appeals did not give weight to, seemingly did not perceive, the direct effect on the government

of sustaining the tax, the pro tanto frustration of the paramount National objectives to be attained by the subsidy payments. The Court assumed that there was involved only another incidental nondiscriminatory tax which the metal producers might as well pay to the State taxing authorities.

The direct and not merely the incidental effect of the proposed tax was and will be to take moneys paid for, and intended by the government to be used to defray, costs *other than the State property taxes,* and divert them pro tanto into respondents' treasuries for general State and County purposes. If the tax be sustained, the Federal government's purpose of producing more metals from sub-marginal operations, will be frustrated unless the National government shall itself pay this tax, and that certainly was contrary to Federal intent. The National government has not consented to the diversion of any part of its subsidies from their fixed purpose, which we think should be sufficient to condemn the State's seizure. If the seizure be approved, the amount thereof hereafter will rest only in the State's discretion.

3. In the case of Kennecott, the Circuit Court of Appeals, counsel respectfully submit, has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision, in this:

The State Legislature and Judiciary alike, as well as the State and Federal constitutions, have enjoined upon the Utah taxing authorities the duty of making tax assessments according to the procedure and value standards prescribed, and without discrimination. (R. 131-144). The undisputed and admit-

ted facts show that such constitutional and statutory standards have been flagrantly ignored, the repudiation whereof has resulted in an arbitrary tax contrary to Utah law. The lower Court so held. (R. 175).

The Utah Supreme Court time and again has announced that Utah taxes may not be sustained if discriminatory and arbitrarily applied: e. g., Continental National Bank v. Naylor, 54 Utah 49, 179 P. 67. But the Circuit Court of Appeals reversed, *entirely ignoring this point.* Established judicial practice would seem to require sustaining the findings below when supported by evidence as was here the case. (R. 93, et seq). The Circuit Court of Appeals has declined to respect Utah law applicable to these assessments, has disregarded the legislative and constitutional mandates of both the State and the Nation and as well the many decisions of the court of last resort of the State of Utah relating thereto. It is submitted that such a departure justifies the consideration of this Court.

The assessments against Kennecott's tailings pond, found by the Circuit Court of Appeals to be "worthless" (R. 299), and against the millsites, were arbitrary, discriminatory, contrary to Utah law, and State and Federal constitutions, and void.

The law is beyond dispute.

> "Those 'whose property was intentionally assessed at a higher percentage or valuation than was placed on the general mass of taxable property in the county may invoke the aid of courts to compel the tax officers to reduce the excessive assessment so

made, to the same proportion of value as was placed upon the general mass of other taxable property in the county. A denial of such right results in inequality and a want of uniformity in the assessment and taxation."

First National Bank of Nephi v. Christensen, 39 Utah 568, 118 P. 778.

"It should be conceded * * * that the intentional and willful adoption of wrong principles, standards, or methods of asessing property for taxes, resulting in inequality, non-uniformity and discrimination to the injury of the taxpayer, entitles him to injunctive relief unless he otherwise has a plain, speedy and adequate remedy. * * * In our opinion it is fundamental, and must be true if the provisions of the Constitution and laws relating to taxation have any force or effect."

Continental National Bank v. Naylor, 54 Utah 49, 179 P. 67.

This principle is surely not just one for lip service; it is basic to our way of life. It is the Federal Rule as well. Cumberland Coal Co. v. Board, 284 U.S. 23, 76 L. ed. 146, 52 S. Ct. 48.

Specific evidence of the factual basis to bring this case under this rule was stipulated at the trial (R. 95 et seq). Respondent admitted the tailings dump to be "of little value." (R. 100). But it was assessed at $286,211.00. (R. 25). The Circuit Court noted that the dump was "worthless." (R. 299).

The millsite lands were also assessed at $45.73 per acre (R. 25), although respondent again admitted this property to be of little value under accepted and statutory standards of value. (R. 101, Sec. 80-3-1(5) Utah Code Annotated 1943). Identical adjacent land was assessed at $4.50 and $5.67 per acre (R. 95).

So the District Court on the basis of these undisputed facts and the elementary principles of law, said:

> "I am also of the opinion that the method pursued by the Tax Commission in arriving at the value of these lands, acted arbitrarily, and that their assessment was illegal on that account even if it be assumed that they had authority to assess them." (R. 175)

Kennecott's contention and the decision of the District Court was ignored by the Circuit Court of Appeals. *Its opinion is silent on this point.* The "value" figure bore no relation to the definition of Sec. 80-3-1, Utah Code Annotated 1943, or to Section 3, Article XIII of the Utah Constitution, and might just as well have been $100.00, $1000.00, or any other amount per acre once the prescribed standards were no longer controlling.

Kennecott attacked the assessment of the golf course on the further ground that it could lawfully have been made only by the *County Assessor,* that under Utah law the State Tax Commission had no authority whatever to make it. The unambiguous mandate of the Utah law on this point is:

a. Article XIV, Section 11, Constitution of Utah:
"* * * The State Tax Commission shall * * * assess mines * * *."

b. Section 80-5-3, Utah Code Annotated 1943:
"* * * all mines and mining claims * * * must be assessed *by the state tax commission* as hereinafter provided * * *. All taxable property not required by the constitution or by law to be assessed by the state tax commis-

> sion must be assessed *by the county assessor* of the several counties in which the same is situated * * * ". (Italics ours).

On this point respondent itself in its brief said, "perhaps the assessment thereof should be by the county assessor instead of the State Tax Commission." And the District Court held:

> "It seems to me quite clear that the Tax Commission was not authorized to assess the land referred to as a recreational area." (R. 175)

The State Tax Commission, a different legal entity from respondents, was created in 1930 by amendment of Section 11, Article XIV, of the Utah Constitution; it then assumed the functions of the old State Board of Equalization. It had been held that the difference in the respective powers of the old Board and those of the County Assessors was such that action by one, when the other should have acted, was void. Salt Lake County v. Utah Copper Co., 294 F. 199, 202:

> " * * * There can be no doubt that the state of Utah intended to substitute, and by its Constitution and statutes in effect did substitute, the taxation by its board of equalization of the net annual proceeds of mines and mining claims for the taxation of such mines and mining claims in proportion to their value estimated by the taxing officers of the county and that it thereby exempted them from taxation by the latter. It seems certain that after the annual proceeds of this mine were taxed for 1917 and 1918 by the board of equalization, as they probably were, neither the mine itself nor the net annual proceeds thereof could be lawfully taxed again for those years by the taxing officers of the county. Nor does it

> seem doubtful that, if they were not so taxed by the state board of equalization, nevertheless they could not lawfully be taxed by the taxing officers of the county, because the state had vested the exclusive power to tax them in the state board of equalization."

4. There is no place here for "administrative construction."

The Circuit Court of Appeals reversed, brushing off this Kennecott question by saying:

> "For twenty-four years prior to the year in question these lands were consistently assessed in the same manner and at substantially the same amount as they were assessed here. There was no change or substantial difference in the making of these assessments, either as to procedure or valuation. The assessment in that manner over that period of time amounted to an administrative interpretation of the statute in its application to lands thus situated and used." (R. 301)

The very construction the Court below attempted to apply is itself violative of and defeated by the statutory and constitutional prohibitions hereinbefore frequently referred to.

Respondent Salt Lake County has here stipulated that although "Mining and the milling and reduction of ores is, and throughout the history of the State of Utah has been, one of the principal industries of that state, and there are many mine dumps of ores and waste, as well as tailings, in the State of Utah," still "the state taxing authorities *** have assessed no lands in the State of Utah that were occupied by tailings or other dumps other than the lands here involved owned by the plaintiff (Kennecott) and its predecessors in interest"; and that "In all other instances the several counties

of the State of Utah have assessed the lands upon which tailings and mine waste have been dumped by mine operators." (R. 101).

Kennecott's mine, mills and dump are like all others in the State of Utah, except for size. To turn a case on asserted administrative construction, when applied in the *instant case alone*, of all the mines in Utah with their dumps and mill-sites, appears indeed to be the epitome of judicial subservience to administrative absolutism. Kennecott's submission over the years to this species of local extortion can create no administrative practice by any definition of which we are aware.

The Supreme Court of Utah has but recently reiterated the elementary rule of construction that allied taxing statutes are not to be taken alone, but are to be considered together as parts of a plan. Union Portland Cement Co. v. State Tax Commission, 176 P. 2d 879. What is Utah's *tax plan* for ad valorem assessment of mining property? This plan is simple and unambiguous.

> "The Constitution of Utah declares (Secs. 2 and 3, art. 13) that all property in the state shall be taxed in proportion to its value, and requires the legislature to provide a uniform and equal rate of assessment and taxation of all property according to its value in money, and prescribe such regulations as shall secure a just valuation for the taxation of all property so that every person and corporation shall pay a tax in proportion to such value. • • •
>
> "The state Constitution plainly contemplates that all property, irrespective of its character, shall be taxed 'according to its value in money.' The pro-

vision with reference to the taxation of metalliferous mines does not mean to depart from this rule."

South Utah Mines & Smelters v. Beaver County, 262 U. S. 325, 67 L. ed. 1004, 43 S. Ct. 577.

As has been seen, the Utah statutes repeat and effectuate these constitutional provisions, expressly defining value to "mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor." Within that plan the State Tax Commission is empowered to assess mines and mining property; other property is to be assessed by the county in which it is located.

Against the foregoing background and in contradiction of this simple and unambiguous plan, the Circuit Court of Appeals applied what it termed an administrative construction to sustain an assessment of the site of this tailings pond, conceded to be worthless, at the sum of $286,211.00; the millsites, admitted to be of little value (being bottom land near the Great Salt Lake and rocky country at the foothills of the mountains), at $45.73 per acre (R. 100); and to sustain an assessment of the golf course by the State Tax Commission, which had no legal authority to make it. This is indeed a strange and novel conception of administrative construction, conjured up to override the clearly expressed contrary intention of statutes and constitutions alike. This assessment is a nullity because it was made with utter indifference to value, because it has not only no basis in, but is contrary to, the mandate of the statutes and Constitution of the State of Utah and the Constitution of the United States.

CONCLUSION

It is respectfully submitted that the petitions for writs of certiorari should be granted.

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